

Readopt with amendment PART Env-Wq 501, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 501.01 Purpose. The purpose of this chapter is to establish:

- (a) The procedures and criteria applicable to governmental entities that apply for financial assistance from the state water pollution control revolving fund (SRF) established pursuant to RSA 486:14;
- (b) The requirements for completing projects for which financial assistance from the SRF is received; and
- (c) The process for establishing repayment requirements for the financial assistance received.

Env-Wq 501.02 Applicability. The rules in this chapter shall apply to any governmental entity that obtains or wishes to obtain financial assistance from the SRF.

Readopt Env-Wq 502.01, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.01 “Administration costs” means expenses associated with managing the SRF program. Such costs include engineering and environmental review of proposed pollution abatement projects, state overview inspections, and accounting and disbursement functions.

Readopt Env-Wq 502.03, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.03 “Capitalization grants” means funds made available to the state by the federal government for use in the SRF program in accordance with:

- (1) Title VI of the federal Water Quality Act (WQA), 33 U.S.C. §§1381-1387; or
- (2) Any other federal initiative.

Readopt Env-Wq 502.08, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.08 “Disbursements” means a transfer of funds from the SRF to a recipient.

Readopt Env-Wq 502.11, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.11 “Excusable delay” means a delay that is beyond the recipient’s control in beginning or completing the planning, design, or construction of a pollution abatement project such as, but not limited to, a delay caused by an act of nature or war.

Readopt Env-Wq 502.13, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.13 “Financial assistance agreement” means the contract between the state and a recipient that establishes the rights and obligations of the state and the recipient relative to financial assistance from the SRF. The term includes original loan agreements and supplemental agreements.

Readopt Env-Wq 502.15, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.15 “Governmental entity” means a city, town, district association, county, or other public body created under state law, having jurisdiction over stormwater management or disposal of sewage, industrial waste or other wastes.

Readopt Env-Wq 502.19, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.19 “Loan recipient” means a governmental entity that receives a loan from the SRF.

Readopt with amendment Env-Wq 502.20, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.20 “Loan repayment” means the principal or interest payments, or both, on loan funds received by a loan recipient, which must be credited directly to the SRF.

Readopt Env-Wq 502.23, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.23 “Original loan agreement” means the initial contract between the state and a loan recipient through which the department agrees to provide funds from the SRF to the loan recipient and the loan recipient promises to repay the loan to the SRF.

Readopt with amendment Env-Wq 502.25, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.25 “Pollution abatement project” means a project, including the design, planning, or construction of any or all aspects of the project, necessary to prevent, minimize, or abate water pollution caused by point or non-point sources or other impairments.

Readopt with amendment Env-Wq 502.28, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.28 “Project completion” means the date of substantial completion of a pollution abatement project or the scheduled completion date in the financial assistance agreement, unless modified with the consent of all parties.

Readopt with amendment Env-Wq 502.29, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.29 “Recipient” means a governmental entity that receives financial assistance from the SRF. The term includes loan recipients.

Readopt with amendment Env-Wq 502.35, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 502.35 “Supplemental agreement” means an amendment to a financial assistance agreement executed between the state and a recipient which stipulates the final project cost and the applicable repayment terms.

Readopt Env-Wq 504.01, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 504.01 Priority List.

(a) The commissioner shall establish and maintain a priority list of projects eligible to receive financial assistance from the SRF.

(b) The priority list shall contain 2 portions, as follows:

(1) A fundable portion, consisting of those projects ready for construction and anticipated to execute agreements from available funds within the coming fiscal year as evidenced by a completed financial assistance pre-application submitted to the department; and

(2) A planning portion, consisting of a list of all government entities that might receive

financial assistance in a future year.

Readopt with amendment Part Env-Wq 505, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 505.01 Types of Financial Assistance from the SRF. The SRF shall be used to provide financial assistance as authorized by a specific capitalization grant, to governmental entities for the planning, design, and construction of pollution abatement projects, whether covered under §212, §319, or §320 of the WQA or a specific capitalization grant, including but not limited to the following:

- (a) Wastewater facilities;
- (b) Stormwater management;
- (c) The capping and closure of unlined landfills;
- (d) Pollution abatement projects listed in an estuary conservation and management plan developed for an estuary designated as being of national significance under §320 of the CWA; and
- (e) Any appurtenant facilities directly related to (a) through (d), above.

Env-Wq 505.02 Allowable Pollution Abatement Project Construction Costs.

(a) Allowable construction costs for eligible pollution abatement projects shall consist of all costs directly related to the construction, expansion, or upgrading of any of the following:

- (1) Wastewater treatment plants with up to a 20 year design life;
 - (2) Interceptor sewers with up to 50 year design life;
 - (3) Collector sewers in accordance with §211 of the WQA, however loans for construction of collector sewers shall be considered only in areas of documented pollution problems due to failed septic systems or direct discharges;
 - (4) Wastewater pumping stations;
 - (5) Storm sewers;
 - (6) Other stormwater management measures implemented as specified in Env-Wq 1508;
 - (7) I/I correction;
 - (8) Sewer rehabilitation;
 - (9) Treatment or abatement of combined sewer overflows;
 - (10) Septage disposal and treatment facilities; and
 - (11) Any appurtenant facilities directly related to (1) through (10), above.
- (b) Other allowable costs for eligible projects shall include:
- (1) Purchase of necessary land used for ultimate disposal of residues resulting from

wastewater treatment, such as spray irrigation or land application of sludge;

(2) Construction engineering, including but not limited to resident engineering, operations and maintenance manual preparation, and preparation of record drawings;

(3) Loan recipient administration costs directly related to the pollution abatement project that are attributable to additional administrative duties outside of normal duty hours; and

(4) Interest accrued on disbursements.

Env-Wq 505.03 Allowable Planning and Design Costs. Allowable planning and design costs for an eligible pollution abatement project shall consist of all costs directly related to the planning and design of the project, as follows:

(a) Consulting engineering design fees, including fees for pre-closure engineering investigations for landfill capping and closure;

(b) Costs of hydrological investigations, subsurface investigations and soil borings, including costs of pre-closure hydrogeological investigations;

(c) Environmental or archaeological consultants fees where required;

(d) Property boundary survey and engineering survey costs;

(e) Recipient administrative costs to obtain approval of the design of the pollution abatement projects that are attributable to additional administrative duties outside of normal duty hours; and

(f) Interest accrued on disbursements.

Env-Wq 505.04 Additional Allowable Costs Specific to §319 and §320 Projects. Additional allowable costs for the implementation of pollution abatement projects under §319 or §320 of the CWA, including but not limited to estuary conservation and management plans, shall consist of:

(a) Restoration projects for the following estuarine habitats or living resources:

(1) Salt marshes;

(2) Eelgrass and other submerged aquatic vegetation;

(3) Riparian buffers;

(4) Diadromous fish; and

(5) Shellfish;

(b) Projects to restore hydraulic connectivity, such as culvert resizing and replacement and dam removal or repair; and

(c) Elimination of illicit discharges to municipal storm sewers, including but not limited to:

(1) Illicit Discharge Detection and Elimination (IDDE) assessments; and

(2) Correction of illicit discharges.

Readopt with amendment Env-Wq 506.02, , eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 506.02 Financial Assistance Application. An applicant for financial assistance from the SRF shall provide the following information to the department on or with forms provided by the department:

- (a) The name, mailing address, and telephone number of the applicant;
- (b) The name and title of the authorized representative of the applicant, and the individual's mailing address and daytime telephone number if different from that of the applicant, and if available, the individual's fax number and e-mail address;
- (c) A brief description of the project;
- (d) The estimated total project cost including cost support data;
- (e) The estimated project construction period;
- (f) The amount of financial assistance requested;
- (g) The term of the loan requested;
- (h) Estimated cash flow requirements;
- (i) The source of loan repayment funds;
- (j) For planning, design and construction projects, an engineering report outlining:
 - (1) Need;
 - (2) Alternatives evaluation;
 - (3) Cost-effective analysis including both capital and operations and maintenance costs; and
 - (4) Current facilities plan information;
- (k) A resolution certified and sealed by the governmental entity and adopted by the governing body of the governmental entity authorizing filing of the application, and identifying the individuals who have been authorized to sign the resolution and related documents on behalf of the governmental entity;
- (l) A letter signed by the authorized representative indicating that the application has been submitted to the office of energy and planning for review through the New Hampshire intergovernmental review process;
- (m) A letter signed by the authorized representative certifying that the applicant has the financial capability to support on-going operation and maintenance and loan repayment, if applicable;
- (n) Evidence of approval from the governmental entity's governing body to raise, appropriate, and spend the requested funds on the proposed project;

- (o) Documentation regarding the extent of the applicant's existing debt; and
- (p) Documentation of the population served by, and the associated wastewater or stormwater volume for, the project and the receiving facility.

Readopt Env-Wq 506.04 and Env-Wq 506.05, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 506.04 Financial Assistance Agreement.

(a) Following acceptance of the application and upon availability of funds, a financial assistance agreement shall be executed between the state and the applicant on forms provided by the state treasurer and obtained from the department.

(b) The financial assistance agreement shall be subject to approval by the governor and executive council.

Env-Wq 506.05 Plans, Specifications, and Engineering Contracts.

(a) Pursuant to RSA 485-A:4, IX, the applicant shall submit plans and specifications for wastewater facilities for review and approval in accordance with Env-Wq 700.

(b) For projects to abate non-point source pollution, the applicant shall submit plans and specifications meeting the requirements specified in Env-Wq 1503.07 through Env-Wq 1503.09, as applicable, which demonstrate compliance with the applicable provisions of Env-Wq 1508;

(c) No construction project shall be offered for public bid until such approval is granted by the department.

(d) For all projects funded by the SRF program, whether for construction, planning, or design, a contract for professional services shall be in compliance with Env-Wq 600.

Readopt Env-Wq 506.08 and Env-Wq 506.09, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 506.08 Timely Use of Funds.

(a) A recipient shall begin expenditure of funds within 6 months of the execution of the financial assistance agreement.

(b) If the recipient fails to comply with (a), above, the department shall request the recipient to show cause why the financial assistance agreement should not be canceled.

(c) The department's request shall:

(1) Be in writing;

(2) Specify a date by which the recipient must respond to the request, which shall be 20 working days from the date of the notice; and

(3) Inform the recipient that if the recipient wishes to have an adjudicative hearing prior to the financial assistance agreement being cancelled, the response filed pursuant to (2), above, shall so indicate.

(d) If the recipient wishes to have an adjudicative hearing, the following shall apply:

(1) The applicant shall respond in writing to the request sent by the department pursuant to (b), above; and

(2) The applicant's response shall include a request for a hearing.

(e) If a hearing is requested and a settlement is not reached, the hearing shall be conducted in accordance with the provisions of Env-C 200 that apply to adjudicative proceedings.

(f) If the recipient shows that the delay in expending the funds was based on an excusable delay, the department shall not cancel the financial assistance agreement.

Env-Wq 506.09 Disbursements.

(a) To obtain a disbursement for eligible work and equipment from the awarded funds, the recipient shall submit a written disbursement request to the department.

(b) The written request shall include the following, as applicable to the request:

(1) The original and one copy of a completed, signed Request for Disbursement form;

(2) A list of the invoices or payment requisitions included with the request, by number and date, separated into the appropriate classifications of funds;

(3) Invoices for equipment and materials delivered and properly stored;

(4) Invoices from the consultant or engineer;

(5) Payment requisitions from the contractor(s), and

(6) Invoices for eligible costs not covered under (3) through (5), above.

(c) The department shall approve the request if it determines that the costs covered by the request are eligible under Env-Wq 505.02 through Env-Wq 505.04, as applicable, and the recipient's financial assistance agreement, as applicable.

(d) Upon approval of the request, the department shall authorize the disbursement to be made from the SRF.

(e) The recipient shall not make disbursement requests more frequently than monthly.

Readopt with amendment Env-Wq 506.10 and Env-Wq 506.11, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 506.10 Supplemental Agreement.

(a) Upon completion of the project, the original financial assistance agreement shall be amended to reflect the actual project expenditures. A supplemental agreement shall be executed between the state and the recipient on forms provided by the state treasurer.

(b) The supplemental agreement shall contain the following information:

- (1) The loan interest rate selected by the loan recipient based on the established market rate at the time that the supplemental agreement is prepared; and
- (2) The loan repayment schedule based on the final project cost.
- (c) The supplemental agreement shall be subject to approval by the governor and executive council.

Env-Wq 506.11 Repayments.

- (a) The loan recipient shall repay funds received and interest accrued thereon to the state as stipulated in the supplemental agreement.
- (b) Repayments shall:
 - (1) Not exceed the maximum repayment period allowed by the WQA or a capitalization grant, as appropriate; and
 - (2) Begin by the earlier of one year following the date of substantial completion of the project or one year following the scheduled completion date established in the financial assistance agreement, unless modified with the consent of all parties.
- (c) Should excusable delay be incurred beyond the scheduled completion date, the commissioner shall offer to modify the financial assistance agreement to account for the delays.
- (d) Any modification of the financial assistance agreement shall be negotiated with and approved by the recipient and the state prior to any formal modification of the financial assistance agreement.
- (e) Loans may be repaid prior to the date stipulated in the financial assistance agreement with no prepayment penalty.

Readopt Env-Wq 506.12, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 506.12 Return of Funds to the Department.

- (a) Financial assistance provided from the SRF shall be used and expended by the recipient solely and exclusively for the payment of authorized and allowable costs and expenses of the project for which the financial assistance was approved.
- (b) If the recipient uses any funds provided from the SRF for other than eligible costs on the specific project for which such funds were furnished, the recipient shall return or otherwise repay to the department all such funds.

Readopt with amendment Env-Wq 506.14, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 506.14 Loan Amortization.

- (a) Loan repayment shall be made according to a fixed amortization schedule based on:
 - (1) The final project cost;
 - (2) The repayment period selected by the loan recipient of 5, 10, 15, or 20 years, or such other

time period allowed under the specific capitalization grant from which the funds are loaned; and

(3) The established interest rate at the time the supplemental agreement is executed.

(b) Loan amortization shall be made on a semi-annual or annual basis with either level debt service, or level payments of principal plus interest according to RSA 33:2, at the option of the loan recipient, over the selected repayment period of 5, 10, 15, or 20 years, or such other time period allowed under the specific capitalization grant from which the funds are loaned.

Readopt with amendment Env-Wq 507.01, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 507.01 Interest Rates Established.

(a) Interest on loan funds disbursed to a loan recipient prior to the date of substantial completion or the date of scheduled completion, whichever is earliest, shall accrue at the rate of one percent per year up to the date of substantial completion or scheduled completion whichever is earliest.

(b) Subject to (c), below, the interest rate charged on disbursed loan funds during repayment of the loan shall be:

(1) If the loan recipient selects a 5-year repayment period, 25 percent of the market rate minus one percent;

(2) If the loan recipient selects a 10-year repayment period, 50 percent of the market rate minus one percent;

(3) If the loan recipient selects a 15-year repayment period, 75 percent of the market rate minus one percent;

(4) If the loan recipient selects a 20-year repayment period, 80 percent of the market rate minus one percent; and

(5) Calculated in accordance with the capitalization grant if the loan recipient selects a repayment period longer than 20 years pursuant to the terms of the specific capitalization grant from which the funds are loaned.

(c) If the interest rate calculated in accordance with (b), above, is higher than the interest rate charged by federal agencies for water or wastewater infrastructure projects, the interest rate shall be set at the lower of:

(1) The rate determined as specified in accordance with criteria established by the specific capitalization grant from which the funds are loaned; or

(2) The interest rate charged by federal agencies for water or wastewater infrastructure projects.

Readopt with amendment Env-Wq 507.02 and Env-Wq 507.03, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 507.02 Interest Charges.

(a) Interest on any loan funds disbursed to a loan recipient shall begin to accrue as of the date of

each disbursement of such funds by the state.

- (b) The loan recipient shall pay interest charges incurred on disbursed loan funds:
 - (1) Semi-annually, prior to the commencement of the loan repayment;
 - (2) Prior to the commencement of loan repayment;
 - (3) At the time of the first repayment; or
 - (4) By adding the charges to the outstanding principal balance.
- (c) Interest charges during loan repayment shall be:
 - (1) Fixed over the loan repayment period; and
 - (2) Established at the time of the execution of the supplemental agreement based on the loan repayment period selected by the loan recipient.

Env-Wq 507.03 Adjustments to Interest Rate.

- (a) The department shall review the interest rate stipulated in the original loan agreement at the completion of the project prior to setting the final repayment schedule as outlined in the supplemental agreement.
- (b) If the interest rate stipulated in the original loan agreement is higher than the rate that would be calculated as specified in Env-Wq 507.01 when the supplemental agreement is executed, the loan interest rate shall be recalculated as specified in Env-Wq 507.01(c).
- (c) If the interest rate stipulated in the original loan agreement is lower than the rate that would be calculated as specified in Env-Wq 507.01 when the supplemental agreement is executed, the loan interest rate shall be the rate stipulated in the original loan agreement.

Amend the introductory language of Env-Wq 508.01, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 508.01 Assurances. Prior to receipt of financial assistance, the recipient shall provide evidence of the following, as applicable:

Readopt Env-Wq 508.02 and Env-Wq 508.03, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

Env-Wq 508.02 Certification. The recipient shall certify in a letter to the department that any pollution abatement project constructed from funds made available through the SRF meets applicable design specifications and, if a wastewater treatment plant, meets effluent limitations included in its permit one year after the initiation of operation.

Env-Wq 508.03 Inspection. Recipients shall contract for or otherwise provide for on-site inspection of the work being funded. The extent of inspection shall be agreed upon by the recipient and the department and stipulated in the contract for professional services. The recipient also shall make provision for periodic inspection by department personnel.

Readopt with amendment Env-Wq 510, eff. 3-1-09 (doc. #9394, Interim), to read as follows:

PART Env-Wq 510 WAIVERS

Env-Wq 510.01 Purpose. The rules in this chapter apply to a variety of situations. It is recognized that strict compliance with all rules may not always be in the best interests of the public or the SRF in every conceivable situation. The department therefore establishes these procedures and criteria, in accordance with RSA 541-A:22, IV, to accommodate those situations where strict adherence to the rules would not be in the best interest of the public or the SRF.

Env-Wq 510.02 Procedures.

(a) Any applicant or recipient who is or would be directly and adversely affected by the strict application of a rule in Env-Wq 500 may request a waiver thereof.

(b) Each request for a waiver shall be filed in writing.

(c) Each request for a waiver shall include the information specified in Env-Wq 510.03.

Env-Wq 510.03 Content and Format of Requests.

(a) The person requesting the waiver shall provide the following information:

(1) The name, mailing address, and daytime telephone number of the requestor;

(2) The project to which the waiver request relates;

(4) The number(s) of the specific section(s) of the rules for which a waiver is sought;

(5) A full explanation of why a waiver is being requested, including an explanation of the consequences of complying with the rule as written;

(6) If applicable, a full explanation of the alternate(s) proposed to be substituted for the requirement in the rule, including documentation and data to support the alternative;

(7) Whether the need for the waiver is time-limited and, if so, the estimated length of time the waiver will be needed; and

(8) A full explanation of why the applicant believes that having the waiver granted will meet the criteria specified in Env-Wq 510.04.

(b) The person requesting the waiver shall sign the request.

(c) The signature shall constitute certification that:

(1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and

(2) The signer understands that any variance granted based on false, incomplete, or misleading information shall be subject to revocation.

Env-Wq 510.04 Criteria.

- (a) Subject to (b), below, the department shall grant a waiver if:
- (1) Granting the waiver will result in circumstances that are as protective of the public, the environment, and the integrity of the SRF program as complying with the requirements contained in this chapter;
 - (2) Granting the waiver will not adversely impact the department's obligations under RSA 486, the WQA, or any capitalization grant; and
 - (3) Strict adherence to the rule would not be in the best interest of the public, the environment, or the SRF.
- (b) No waiver shall be granted if the effect of the waiver would be to waive or modify a state or federal statutory requirement, including but not limited to any requirement of RSA 486, the WQA, or a capitalization grant, unless such statute expressly provides that the requirement may be waived or modified.

Env-Wq 510.05 Decisions.

- (a) The department shall notify the person requesting the waiver of the decision in writing within 30 days of receiving a complete request. If the request is denied, the department shall identify the specific reason(s) for the denial.
- (b) The department shall include such conditions in a waiver as are necessary to ensure that the criteria specified in Env-Wq 510.04 are met, including if applicable the implementation of alternatives.
- (c) If the need for a waiver is temporary, the waiver shall specify the date on which it will expire.

APPENDIX

Rule Section(s)	Specific State or Federal Statute(s) Implemented
PART Env-Wq 501	RSA 486:14; 33 U.S.C. §§1251-1387
Env-Wq 502.01; Env-Wq 502.03; Env-Wq 502.08; Env-Wq 502.11; Env-Wq 502.13; Env-Wq 502.15; Env-Wq 502.19; Env-Wq 502.20; Env-Wq 502.23; Env-Wq 502.25; Env-Wq 502.28; Env-Wq 502.29; Env-Wq 502.35	RSA 486:14; 33 U.S.C. §§1251-1387
Env-Wq 504.01	RSA 486:14; 33 U.S.C. §§1251-1387
PART Env-Wq 505	RSA 486:14; 33 U.S.C. §§1251-1387
Env-Wq 506.02; Env-Wq 506.04; Env-Wq 506.05; Env-Wq 506.08 - Env-Wq 506.12; Env-Wq 506.14	RSA 486:14; 33 U.S.C. §§1251-1387
Env-Wq 507.01 through Env-Wq 507.03	RSA 486:14; 33 U.S.C. §§1251-1387
Env-Wq 508.01 intro; Env-Wq 508.02; Env-Wq 508.03	RSA 486:14; 33 U.S.C. §§1251-1387
PART Env-Wq 510	RSA 541-A:22, IV